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TO HIS EXCELLENCY

Sir Caspard Le Marchant,

Knight, Knight Commander of the Orders of Saint Ferdinand and of Charles the Third of Spain, Lieutenant-Governor and Commander in Chief, in and over Her Majesty's Province of Nova-Scotia, and its Dependencies, &c., &c., &c.

THE REPORT

OF THE UNDERSIGNED COMMISSIONERS APPOINTED BY YOUR EXCELLENCY TO PREPARE AN ACT ON THE SUBJECT OF BANKRUPTCY.

May it please your Excellency :

Being entrusted with the duty of preparing the draft of a bankruptcy law, to be submitted to the Legislature of this Province, we held one or two meetings shortly after receiving the commission, with a view of settling such principles in relation to the subject, as might recommend themselves to our judgment.

We were not able to discover any system or code of bankruptcy in practical operation, either abroad, or in any of the neighbouring colonies or states, which we could recommend as suited to the circumstances of our own people.

A bankrupt law, whereby honest but unfortunate traders may be protected, the rights of creditors indiscriminately respected, and a system of preferential assignments, but too common, counteracted, seems universally admitted to be absolutely indispensable in a trading community. Several attempts, we learn, have, from time to time, been made to secure for Nova-Scotia a bankrupt law, and which have hitherto failed. The delay, and expence incident to the systems proposed, and the principles of centralization inseparable from any single metropolitan court, have, it is said, largely contributed to defeat all previous efforts;—and the undersigned are by no means insensible of the difficulties which beset the present undertaking.

At home and abroad, great and commendable efforts are being made to simplify legal enactments—to strip jurisprudence, as a science, of its technical phraseology—to cheapen the administration of law, and to expedite legal decisions. Local tribunals, whose sittings are not necessarily periodical, tribunals accessible at all times, other things being equal, in the opinion of the undersigned, seem best adapted to the administration of bankruptcy enactments.

Impressed with these views, the commissioners early discovered that in addition to provisions for the protection of debtor and creditor, an important feature of their duty must necessarily consist in providing, ~~in addition to~~

not only

~~and~~
code, ~~not~~ a tribunal to administer it, but a system of procedure, to regulate its practice.

In drafting the act accompanying this report, and which they have now the honor to submit as the results of their united labours, the commissioners have studied to offer every reasonable inducement to traders, to transact their dealings with honesty and fidelity; and have at the same time sought to discountenance all fraud, preferential assignments, secret payments, and improper concealments.

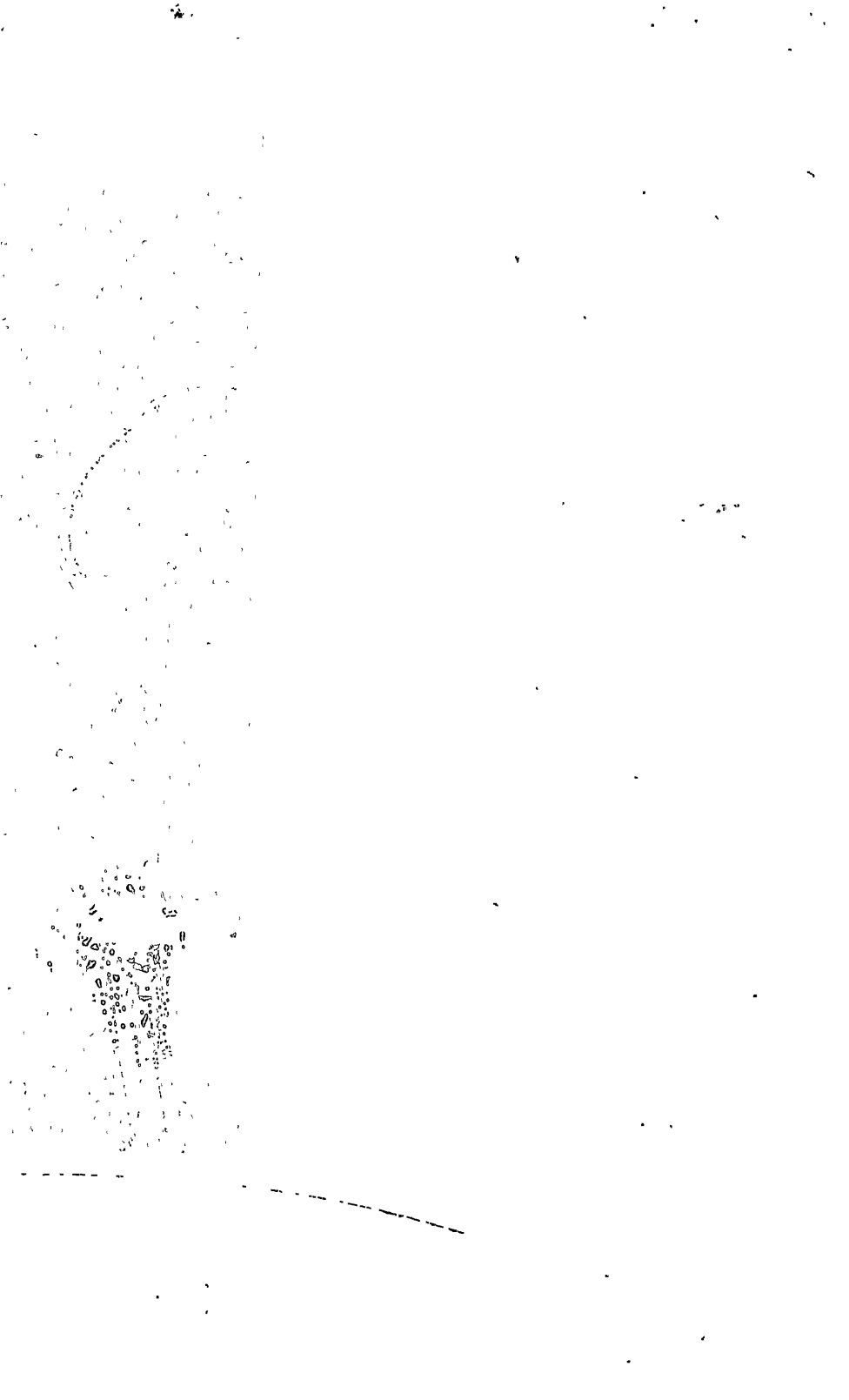
The machinery of the act, as framed, is so constructed—where no appeals shall operate to stay proceedings—that the affairs of a bankrupt may be wound up in about twelve months from the date of a fiat of bankruptcy.

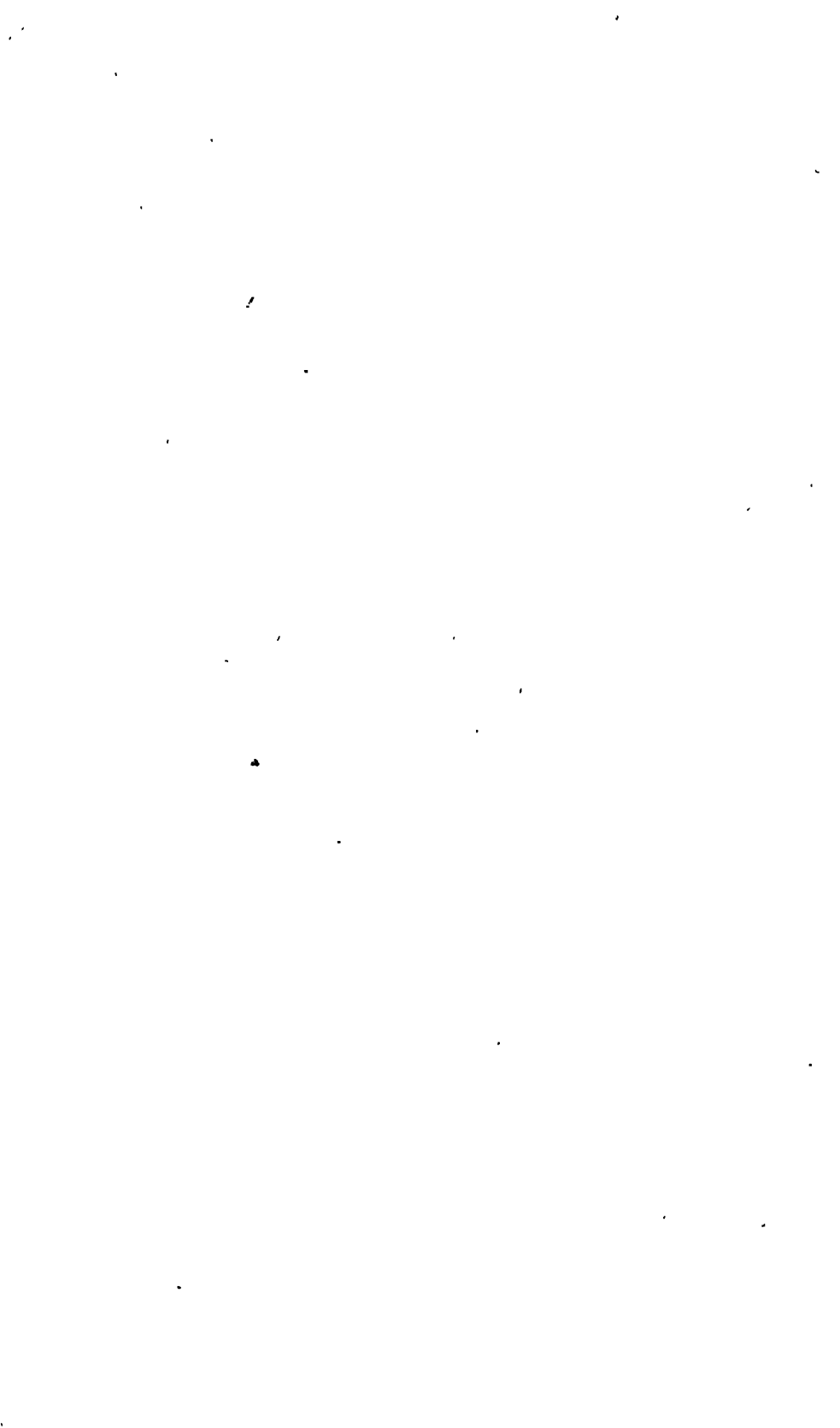
There are many provisions which the practical operation only, of such an act, as is now reported may suggest—these, it will be the prerogative of the Legislature, from time to time, to supply. Some of the enactments drafted in the bill, are such as may well deserve, and we commend, to the calmest and most careful deliberation of the Legislature. The commissioners would rather be understood, as recommending for adoption the principles enunciated, the tribunals to be erected, for dispensing its provisions, and the general features of the bill, than the entire particularity of detail.

J. McCULLY,
* L. M. WILKINS,
L. O'C. DOYLE,
WM. PRYOR, JNR.,
F. CHARMAN.

HALIFAX, Feb. 25, A. D. 1854.

* Acquiescing in the general character of the report, but not satisfied of the indispensable necessity of a bankrupt law for Nova-Scotia.





AN ACT

RELATING TO BANKRUPTCY.

Be it enacted by the Governor, Council, and Assembly, as follow :

1. The governor in council may appoint a judge of bankruptcy, a registrar of bankruptcy, and an official assignee of bankruptcy being a person skilled in mercantile accounts, for each of the counties of this province; such persons shall hold office during pleasure, and be sworn before a judge of the supreme court, or the custos of the county.

2. The official assignee, before being sworn, shall file in the office of provincial secretary, a bond to the queen, with two sureties, in the penal sum of £2000, conditioned for the faithful discharge of the duties of his office, and shall produce a certificate to that effect to the judge or custos administering the oath of office, such certificate to be filed with the registrar.

3. In case of the death, resignation, or dismissal of an official assignee, the judge may appoint a suitable person to act as his successor until a new official assignee is appointed, such acting official assignee shall give a like bond to be filed with the registrar. An official assignee may in writing appoint a suitable person to act as his deputy in case of illness or unavoidable absence, but the principal and his bondsmen, shall be held liable for all acts or omissions of the deputy. An official assignee shall be exempt from serving on juries.

4. When the judge of bankruptcy shall be interested in the estate of a bankrupt to the extent of £200 and upwards, the case shall be transferred to the bankrupt court of the next adjoining county, and shall be there disposed of and settled. And so soon as settled the judge shall transmit to the court of the county where the bankrupt dwells, or last dwelt, a certified copy under his hand and the seal of his court, of his proceedings, and the same shall be recorded in the books of registry of the court to which they are transmitted.

5. No judge or registrar shall be directly or indirectly employed or professionally concerned as counsel, attorney, solicitor, proctor, or advocate for any party or any matter pending, or to be brought before the court of which he is judge or registrar.

6. The registrar shall have the care and custody of all papers and books; and in case of the death, sickness, or continued absence of the registrar, the judge may appoint and swear into office, some fit person to officiate in his stead, until the standing registrar shall be able to resume his duty, or until a new one be duly appointed.

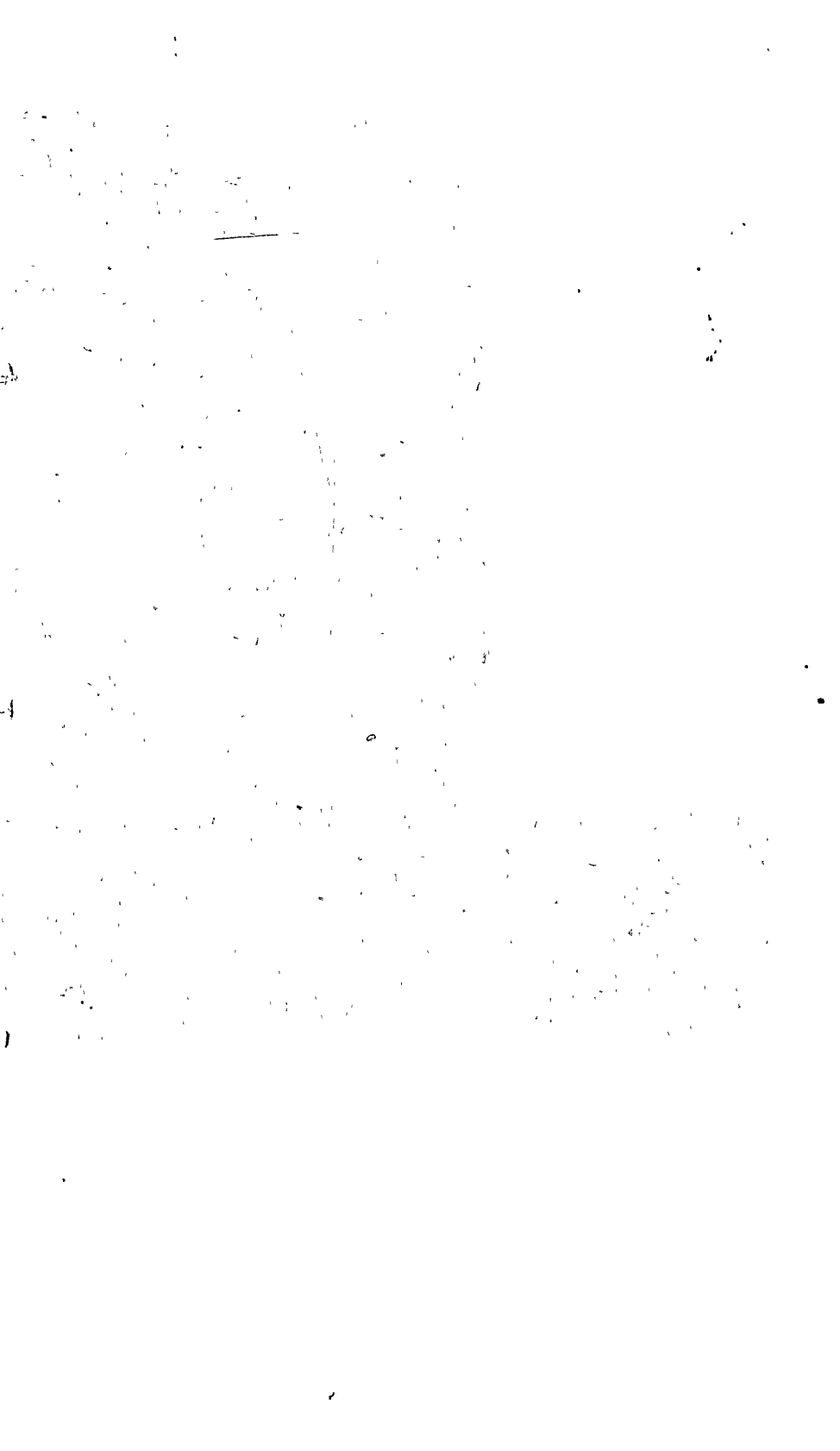
7. The registrar shall number estates consecutively, 1, 2, 3, &c., and shall keep a book of acts containing a short abstract of the proceedings of the court, and a book of decrees properly indexed. He shall provide a seal for the court, having engraved thereon the name of the county and the words "In bankruptcy." Decrees shall be filed and registered. Oaths administered to assignees on entering office, shall be subscribed in writing.

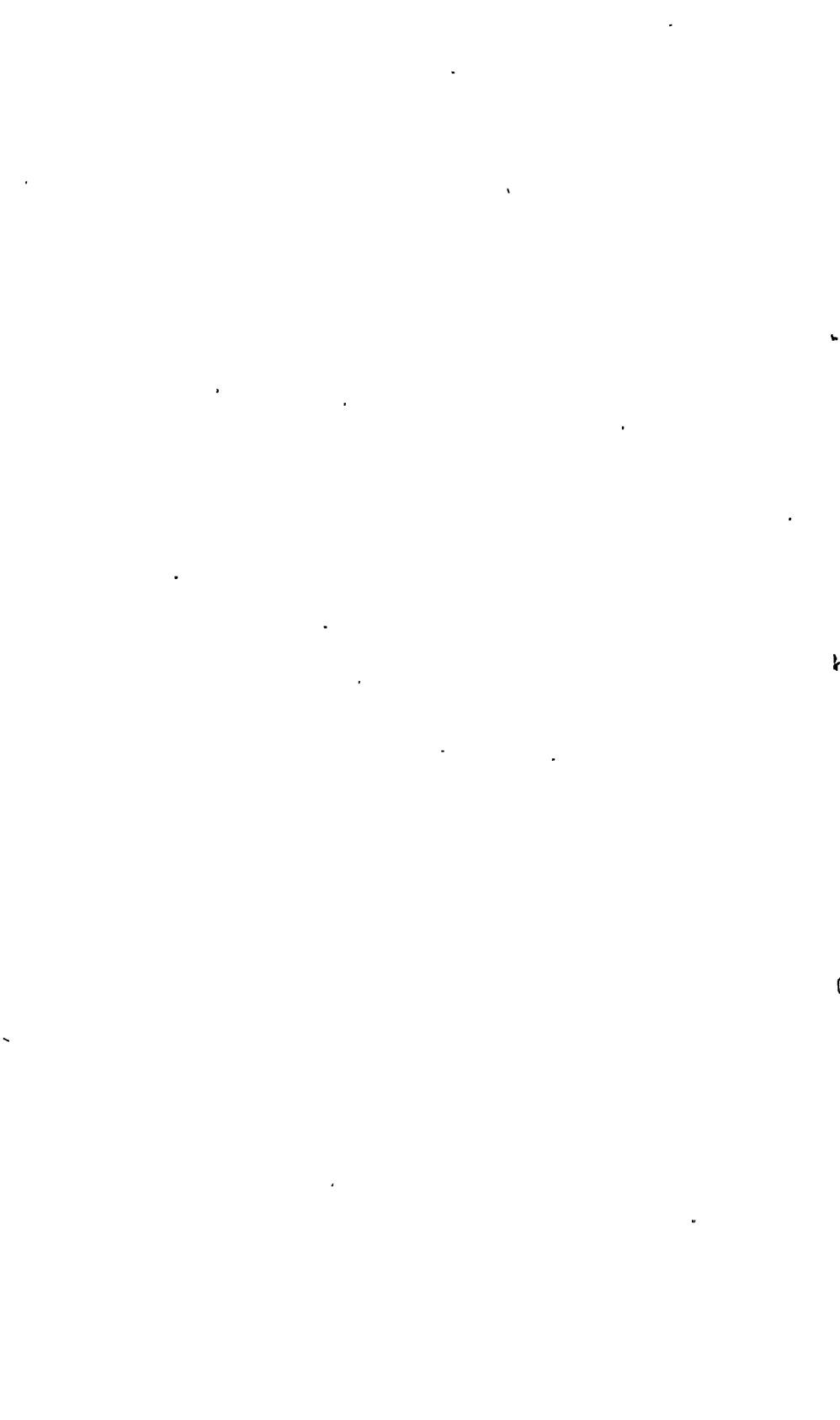
8. All persons of full age and capable by law of making contracts, may be made or become bankrupts, but no person shall become or be liable to be made bankrupt, unless it appear, under oath, that his debts exceed £200. Nor shall any person be compelled to become bankrupt for anything done 60 days previously to petition filed in that behalf.

9. If any person liable to become bankrupt, shall abscond, absent himself from, or conceal himself within the province, shall remain abroad, suffer himself to be arrested for any debt not due, procure himself to be arrested, or his real estate or goods to be attached or levied upon, or make any fraudulent conveyance of his real estate or goods, with intent to defeat or delay his creditors; shall lie in prison or remain on jail limits for debt 21 days; or being in prison, or on such limits for debt, shall remain there 21 days after detainer lodged against him, or shall procure a summons to issue upon a petition praying for relief as an insolvent debtor, he shall be deemed to have committed an act of bankruptcy.

10. Preferential assignments, voluntary gifts, confessions of judgment, warrants to confess judgment, and all kinds of securities, given with intent to prefer creditors, by persons whose estates are insolvent, or given in contemplation of insolvency or bankruptcy, shall be deemed and held acts of bankruptcy, and shall, in proceedings under this act, be held void as against creditors.

11. A bona fide conveyance in writing, of any person's real estate and goods to trustees, for the benefit of creditors, without preference, shall not be deemed an act of bankruptcy, if such writing be at the same time signed by such trustees, witnessed by an attorney at law or a justice of the peace, and public notice





thereof given as hereinafter provided, shewing the date of the execution of the conveyance, the name and place of abode of the parties and witnesses.

12. Trustees so appointed, may, at any time, be cited by a person interested, before the court of bankruptcy, and unless cause to the contrary be shewn, may be declared assignees for the benefit of creditors. They shall then be under the jurisdiction of the court, with all the rights and immunities, and liable to all the responsibilities of other assignees. They may be required to give bonds with security, and be sworn to the faithful discharge of their duty, and in default thereof, any or either of them may be superseded, and, if necessary, the official assignee may be appointed trade assignee by the court; but the debtor, in such cases, shall not be entitled to a bankrupt's certificate.

13. If a petitioning creditor, after petition filed, shall accept from a debtor, charged with bankruptcy, any payment or security, whereby to receive more in the pound than other creditors, it shall be an act of bankruptcy, and such payment or security shall be held fraudulent; and if a fiat nisi have already issued, the court may order it to be proceeded in, or annul it, and permit a new petition to be filed, and thereupon hear proof of the last mentioned or any other act of bankruptcy, by any creditor.

14. One creditor to the extent of £50, two to £70, three to the extent of £100, whether the debts be then due or not, providing they are not contingent, may prefer to the judge of the county where a person liable to be made bankrupt resides, or in case of absence or concealment where he last resided, a petition in the form (A), verified under oath, and the judge or registrar shall endorse the date of reception, and thereupon the judge shall immediately issue a fiat nisi of bankruptcy (B). If then, or at any time before the return day of the fiat nisi, it be made appear, under oath, that there is probable cause for believing that the rights of creditors will not be effectually secured unless a warrant immediately issue to seize or secure and inventory the debtor's estate and goods, the judge may issue his warrant (E) for that purpose, as provided in section 18.

15. Any person liable to be made or become a bankrupt, by petition preferred for that purpose, may voluntarily procure a fiat nisi to issue against himself; but a schedule shall accompany his petition, setting forth a full and particular account of his real estate and goods, where situate, and their value, and also of his

liabilities as nearly as may be, so far as known, which shall be verified under oath, as in form (C.)

16. Upon the issuing of a fiat nisi, the petitioner, (except when he seeks to be made a bankrupt,) shall cause a copy to be immediately served upon the debtor, or his agent, or in the case of absence, or concealment, to be left at his last place of abode.

17. The debtor, or in his absence his agent, may, at any time within two days after service of the fiat nisi, the manner and particulars of which service shall in all cases be verified under oath; enter into a bond to the judge, with sufficient sureties, conditioned, "for his further appearance on a day to be then named, (not more than four days distant) and so from day to day, if required; and that the real estate and goods of the debtor shall not be concealed, abstracted, or improperly dealt with, but shall be duly forth-coming to abide the order of the court." And thereupon the judge shall immediately cause the petitioner to be notified, and hear as well the parties as their witnesses, under oath; and the fiat nisi may then be superseded (D) with costs to be taxed against the petitioner. The bond so given shall continue in force until cancelled by order of the judge.

18. If the fiat nisi, upon such hearing, be not superseded; or if there be no appearance on the day named, the fiat nisi shall be forthwith published, and a warrant (E) shall issue, directed to the official assignee. The real estate and goods of the bankrupt shall, from the date of the act of bankruptcy complained of, vest in the official assignee until superseded, or trade assignees chosen and confirmed as hereinafter provided, in trust, subject to the order of the court.

19. The official assignee shall have power, if need require, to break open any building, box, desk, place, or thing, where the goods or any muniments of title to the real estate of the debtor may reasonably be supposed to be, and to seize and secure the same. He may sell perishable goods at any time, under an order of the court.

20. A warrant (E) delivered to an official assignee, or left at his office, shall operate immediately to supersede all judgments and executions or other writs or process for debts, in whose ever hands the same may be, so far as goods may be thereby affected, where there has not been an actual sale, and the official assignee shall endorse thereon, the date of the receipt of the warrant.

21. The official assignee shall appoint appraisers, and immediately cause an inventory and appraisal of the estate and goods of the person so charged with bankruptcy, to be made under oath,



as in cases of estates of deceased persons. The inventory and appraisement may be amended as need shall require and new ones filed, and they shall be forthwith returned into the registry of the court; but the following items are not to be included therein, namely :

First.—All such articles as would be required to be omitted from the inventory if the debtor were a deceased person leaving a widow.

Second.—All articles exempted from execution.

Third.—The implements of the debtor's trade or calling, not exceeding £20.

22. On the return day of the fiat nisi, the debtor, or any of his creditors, may be examined under oath, call witnesses, and shew cause why such fiat should, or should not be made absolute. The debtor, however, may confess the bankruptcy at any time after the making of the fiat nisi, and the judge may make a fiat absolute accordingly, and issue the warrant (E) immediately, if the same have not previously issued. By summons, or if need be, by warrant, the judge may also compel the debtor to appear in person, and disclose, under oath, the true state of his affairs, and produce any books of account, title deeds, vouchers, securities, and other documents in his possession, and deposit them with the official assignee; and in case of refusal so to do, may punish him for contempt, in the same way as contempts may be punished in the supreme court. In any commitment under this act, the cause thereof shall be specially set forth.

23. If necessary, the fiat nisi may be enlarged, and the judge shall either make the same absolute (F), in which case the costs of procuring it shall be the first charge on the bankrupt's estate, and any order for security for costs shall be thereby discharged; or he may supersede it (D) with costs, against the petitioner. But any creditor, or his agent present, by leave of the court, may prove a debt, and act of bankruptcy; and the judge may make a fiat absolute, setting forth the facts briefly therein; in such case no costs shall be allowed, to or against the petitioning creditor.

24. A fiat absolute being made, a certified copy shall, within thirty days next, be recorded in the office of registry of deeds, in every county where the bankrupt's real estate may lie, which shall entitle the official assignee to a priority over all judgments or conveyances not recorded before the date of the publication of the fiat nisi. And a copy of the fiat absolute, with a notice (G), shall be forthwith published, and upon the day in the notice provided, not being less than ten, nor more than twenty days from

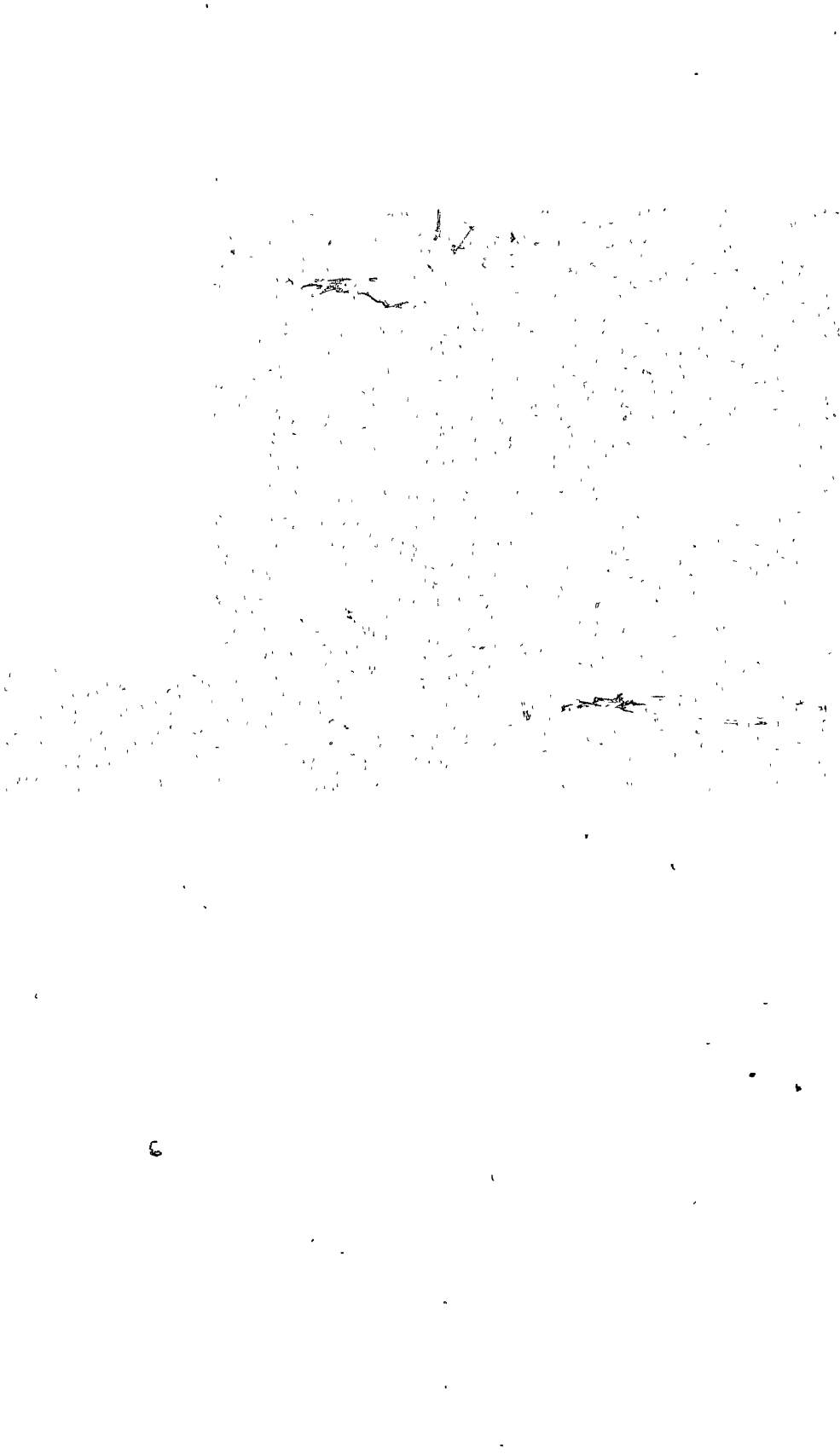
the date thereof, trade assignees shall be chosen by the creditors present, or their agents, by ballot, as follows: the official assignee shall be chairman,—in his absence a chairman may be chosen, and the two persons having the highest numbers of votes, shall be trade assignees. No vote shall be counted unless a ticket (H) have issued by the chairman, and be signed by him.

25. A creditor to the extent of £10, and under £50, shall be entitled to one vote; above £50, and under £200, to two; above £200, and under a £1000, to three; over £1000, to four. The chairman shall furnish the creditors, or their agents, respectively, with a ticket, numbered according to the number of votes to which each may be entitled. The names of the persons intended for trade assignees, shall be written upon the tickets, which shall be placed in a hat, or box, kept by the chairman. In case of a tie, the chairman shall have a casting vote. The chairman shall keep a list, of persons claiming to vote, open for inspection, with the number of votes claimed, and shall read it over audibly, immediately before the election; if the qualification of any voter be disputed before vote given, he or his agent shall first take the oath (I), to be administered by the chairman, who shall make a brief minute of the proceedings of the meeting, in writing, and return the same forthwith, with the names of the persons chosen, to the judge of bankruptcy.

26. The trade assignees shall, within two days then next, execute a bond to the judge, in such penalty as he shall direct, with sureties, for the discharge of the duties of their office. If either of them shall neglect to qualify, the other shall be sole assignee; if neither shall qualify within the time, or, if from any other cause, trade assignees are not chosen and qualified, as above directed, the official assignee shall, ex officio, become trade assignee, with the same powers, privileges, and liabilities, as trade assignees, chosen by the creditors, and in all cases the judge shall make an order of confirmation accordingly. In case of the death of a sole trade assignee, or his continued absence from the province, the judge, upon application, shall, if need require, appoint the official assignee, to be trade assignee. Trade assignees shall be sworn to the faithful discharge of their duty.

27. The estate and goods of the bankrupt, up to the date of any certificate to be allowed, as hereinafter provided, or until final order had, whether in possession, reversion, or remainder, immediately upon order of confirmation made, shall vest in the trade assignees as fully as they were, or would have vested in the bankrupt, had no fiat been made in the matter. The official assignee





upon order made to that effect, shall deliver up possession to the trade assignee, of the real estate and goods of the bankrupt, and the proceeds thereof, and all papers, vouchers, titles, and things connected therewith.

28. The word assignees throughout the remainder of this act, shall be held to mean trade assignees, unless otherwise expressed, or the construction plainly requires otherwise.

29. Assignees, duly confirmed, shall forthwith advertize for three months in the royal gazette, and by three or more handbills posted in the county, and for the same time in one or more papers published in the county, if any there be, requiring creditors to render their accounts, duly attested, and calling upon debtors for immediate payment.

30. Assignees may discount, at the rate of six per cent. per annum, debts not falling due within six months from the date of the fiat absolute. The court, by order, may grant the assignees leave to sell at public auction, any debt not to fall due within six months from the date of the fiat absolute, and any desperate or doubtful debts, and all rights, interests, equities, or claims, which it may be considered for the interest of the estate to be thus disposed of; and the purchaser, or his assignee, shall have all the rights and remedies for recovering the same in his own name, on a brief statement of the facts, which the bankrupt himself, the assignees, or their representatives possessed or could have possessed; and by like leave assignees may compound debts, accept compositions, and submit disputed claims to arbitration. The assignees shall, by public auction, without delay, sell all other the real estate and goods of the bankrupt, and convey the same to purchasers.

31. The accounts of creditors against the bankrupt's estate shall show the actual balance due, after all credits given, and be attested to, as nearly as may be, in the form prescribed in cases of estates of deceased persons, and may be contested in the same way such accounts now are in the courts of probate, or as herein otherwise provided, but no accounts shall be allowed unless attested to by the creditor, or in his absence from the province, by his agent, and rendered within six months next from the date of the fiat absolute, except in cases where there shall be a surplus after paying accounts duly rendered.

32. Examinations and the testimony of witnesses, under oath, shall be reduced to writing, and filed; and the judge shall have power by subpoena, or if need be, by warrant, to enforce the attendance, and to compel the examination of the bankrupt, his wife or any persons, duly subpoenaed, as well debtors as credi-

tors, under pain of contempt of court. He shall have power to issue all process necessary to carry this act into operation, and to enforce the same, in the same way the supreme court now issues and enforces its process. Every compulsory process shall be directed to a sheriff to execute, except in cases where the sheriff is to be affected thereby, when such process shall be directed to a coroner.

33. Whenever a debtor of any estate upon being cited before the judge, shall, upon oath, admit a certain sum due, and the assignee shall consent to accept the same in full, the judge may make an order accordingly, but without costs; and if the same be not paid within ten days next, the assignee may sue out execution upon such order for such debt and costs of execution. A certified copy of such execution recorded in the office of registry of deeds, shall constitute a lien upon the debtor's real estate, in the same way as judgments of the supreme court recorded; but no suit shall be commenced against such debtor, for the recovery of the said debt in any other court.

34. If a claim be not barred by the statute of limitations, at the date of the fiat nisi, the statute shall cease to run thereafter, and such debt may be proved and allowed as other debts.

35. Demands against a bankrupt, payable at a future day, and not due when a fiat nisi shall have issued, shall be treated as due of that date; but a discount at the rate of six per cent. per annum, shall be made for the time such demands have to run before due.

36. Interest on debts drawing interest, shall cease on the date of the issuing of the fiat nisi, and dividends shall be declared on the amounts due as of that date, unless the estate pay over twenty shillings in the pound besides expences, when creditors entitled to interest, may receive it up to the day of payment.

37. Nothing herein shall affect debts due on mortgages of real or personal estate, or on judgments recorded before the date of the fiat of bankruptcy, so far as the value of the property so mortgaged or lands bound by such judgment shall extend, and no more, leaving the mortgagee or judgment creditor at liberty to claim as any other creditor for any balance that may remain due after the value of such property or lands shall have been realized, or as affects a widow's dower in real estate. The equity of redemption in a bankrupt's real estate or goods, whether expired or not, may, at the instance of the assignee, or any mortgagee or judgment creditor be summarily foreclosed before the judge of bankruptcy. The same persons required to be made parties





in a court of chancery, shall be cited, and the citations shall contain a brief statement of the facts. Absent persons may be cited either by a gazette notice for a month, or by citation, duly served a reasonable time before its return day. Upon order of foreclosure made, sale shall be conducted by the assignee—the usual gazette notice, and handbills being posted. Creditors shall rank according to their respective priorities, and may prove for any deficiencies as other creditors. Titles so made shall be as valid as upon foreclosures in chancery.

38. Sureties, bail, and persons liable for the debts or engagements of a bankrupt, may prove as other creditors, provided their liability shall have accrued before publication of the fiat nisi, or before notice of its issue. But if the original creditor shall have proved, then the surety, bail, or person liable, may, at any stage of the proceedings, be required to prove specially, by stating the facts in an affidavit attached to his account, and the judge shall adjudicate equitably, and afford proper relief, treating such double claim as one debt, and shall make dividends accordingly.

39. Obligees on bottomry and respondentia bonds, and persons assured on policies of insurance for valuable considerations, and debts due on contingencies not having occurred, where the engagements shall have been entered into before publication of the fiat nisi, or notice of its issue, may prove and participate as other creditors, provided the loss have occurred or the contingency happened, and such accounts be duly rendered within the time for rendering accounts.

40. Servants, and clerks of domestics shall have preferential claims over other creditors, to the extent of twelve months wages or salary, and landlords for twelve months rent, to be computed back from the date of the fiat nisi, and for any balance shall stand as other creditors. Such preferential claims being first allowed by the judge, may be ordered to be paid at any time after fiat absolute made.

41. A fiat of bankruptcy shall operate to discharge any indented apprentice, yearly or other servant of the bankrupt; and when apprentice fees have been paid, the court may order a return of an equitable proportion thereof.

42. No debt created by the debtor's defalcation as a public officer, executor, administrator, guardian, receiver, trustee, or assignee of a bankrupt or insolvent, shall be discharged under this act, but the creditor may prove his debt, and the dividend received shall be payment for so much of the claim.

43. A bankrupt shall be held disabled to have disposed of any

of his real estate or goods from the date of the act of bankruptcy proved ; but payments made bona fide to, or by a bankrupt, and all conveyances, contracts, dealings, and transactions, bona fide entered into by or with him, before publication of the fiat nisi, or notice of its being issued, and without knowledge of any act of bankruptcy committed, and where full value has been given, or received, or secured, shall be deemed valid. But nothing herein contained, shall give validity to payments or transactions for securing an unfair or fraudulent preference either by endorsements of negotiable securities, or otherwise.

44. If a bankrupt shall have sold any estate, and shall not have made title, the assignees, upon the payment into court of any balance due, may, by order, be declared trustees of the vendee, and give or perfect a title to such vendee, and they may complete any purchase made by the bankrupt, and compel a title, in the same way the bankrupt could have done. They may redeem estates or property mortgaged or pledged, or otherwise dispose of the bankrupt's interest therein, as deemed best for the interest of all concerned.

45. After a fiat absolute issued, no civil suit or proceeding shall be commenced against the bankrupt in any court, for any thing done before the fiat absolute issued, and the supreme court or a judge at chambers shall set any such suit or proceedings aside, on production of a certified copy of the fiat absolute, or a copy verified under oath, with costs, upon a summary application. Every existing civil suit shall, upon the issuing of the fiat absolute, be forthwith discontinued, unless the judge of bankruptcy otherwise order ; but the creditor shall be entitled to a dividend for his costs incurred up to that date, as well as for any debt or claim for damages, to be proved, if the judge shall be of opinion that he would have recovered judgment for debt and costs, had he proceeded in his said suit.

46. If a debtor be in prison, or under arrest for debt at the date of the fiat absolute, the judge, upon petition, may grant him a writ of liberation and protection, (J) which shall remain in force, until superseded, or until final order in the matter. A writ of liberation and protection may be granted to a bankrupt at any time after fiat and before certificate or final order.

47. When two or more persons, partners in trade, become bankrupt, the joint as well as the separate estate and goods of the members of the firm, shall be taken, and the creditors of the firm, as well as the separate creditors of each partner, may prove their debts ; but the partnership creditors only, shall vote for





trade assignees. Separate accounts shall be kept of the property of the firm, and of that of each partner. After payment of all expenses out of the respective funds, in proportion to the debts proved, and allowed against the same, the proceeds of the partnership estate shall be appropriated to pay the creditors of the firm, and those of the individual partners, to pay the debts of each partner; but a fiat nisi may be sued out against, superseded or discharged, as to one or more partners, without further affecting the rest.

48. If any balance of an individual partner's estate remain, after payment of creditors, it shall, if necessary, be added to the proceeds of the partnership estate, for the benefit of partnership creditors, and if there remain any balance of partnership assets, after payment of the debts of the firm, it shall be appropriated among the separate estates of the partners, according to their rights and interests respectively, and be added to the proceeds of their individual estates, for the benefit of creditors of such estates; but a latent partner who shall not, before the expiration of the time appointed for rendering accounts, by intimation to the assignees, acknowledge his partnership, shall be excluded from the benefits of this act, unless he shall show that the omission was accidental, or arose from misconception, and he shall then, as far as possible, obviate any inconvenience thence arising.

49. Assignees may commence suits for the recovery of debts due the bankrupt, upon leave for that purpose, obtained from the judge; and no suit shall abate by the death or removal of an assignee, but the proceedings shall be continued in the name of the survivor. If there be none such, then upon a suggestion, the name of the official assignee may be substituted, and the action shall proceed.

50. Assignees may engage the services of the bankrupt to assist in closing up his estate, at a reasonable rate, to be approved by the court.

51. Amendments may be allowed at any stage of proceedings, upon such terms as shall be reasonable and just.

52. Affidavits and accounts may be sworn to before any judge or registrar of bankruptcy, justice of the peace, judge of a court of record, consul, vice consul, or mayor of any city, or town, where a creditor or party may happen to be; but when sworn to out of the province, they shall be duly authenticated by a notarial certificate.

53. Courts of bankruptcy shall be courts of record, and auxili-

ary to each other for proof of debts and examination of persons or witnesses on oath. Such examinations shall be in writing, and form part of the proceedings in the matter to which they relate; and no proof or examination shall be so taken without the request in writing of the judge, before whom the matter is being prosecuted.

54. Evidence may be taken orally, by affidavits, or depositions, duly sworn, as the court may order, and any person wilfully and corruptly swearing falsely, or affirming falsely, where affirmations by law are allowed instead of oaths, shall be guilty of perjury, and punishable accordingly.

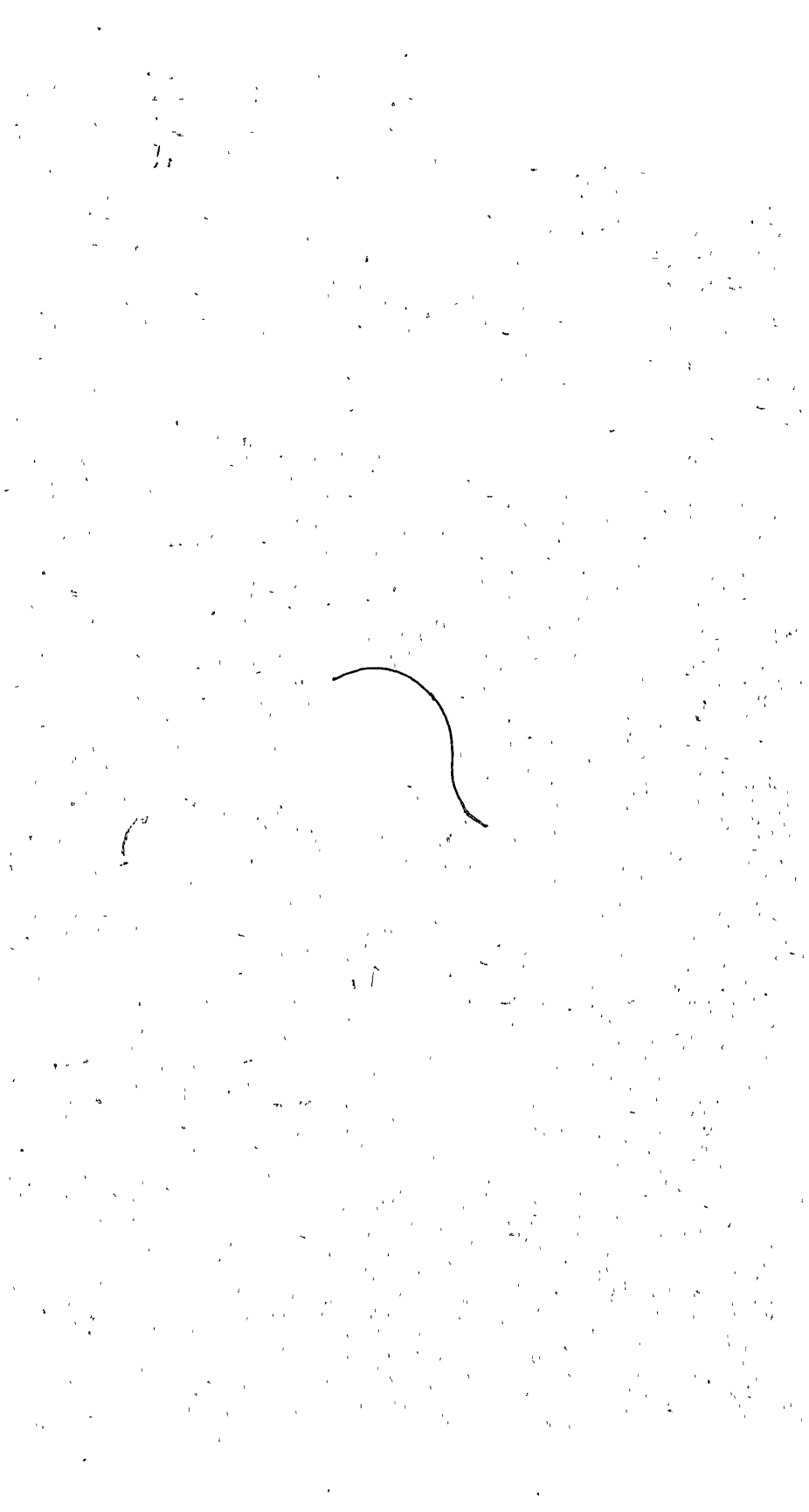
55. Any creditor accepting a valuable consideration for forbearing to oppose, or for consenting to allow a certificate to pass to any bankrupt, shall forfeit his claims to any dividend, and both he and the party giving the same shall be guilty of a misdemeanor, punishable each upon conviction in the supreme court, by a fine of not more than one hundred pounds, and imprisonment not more than one year.

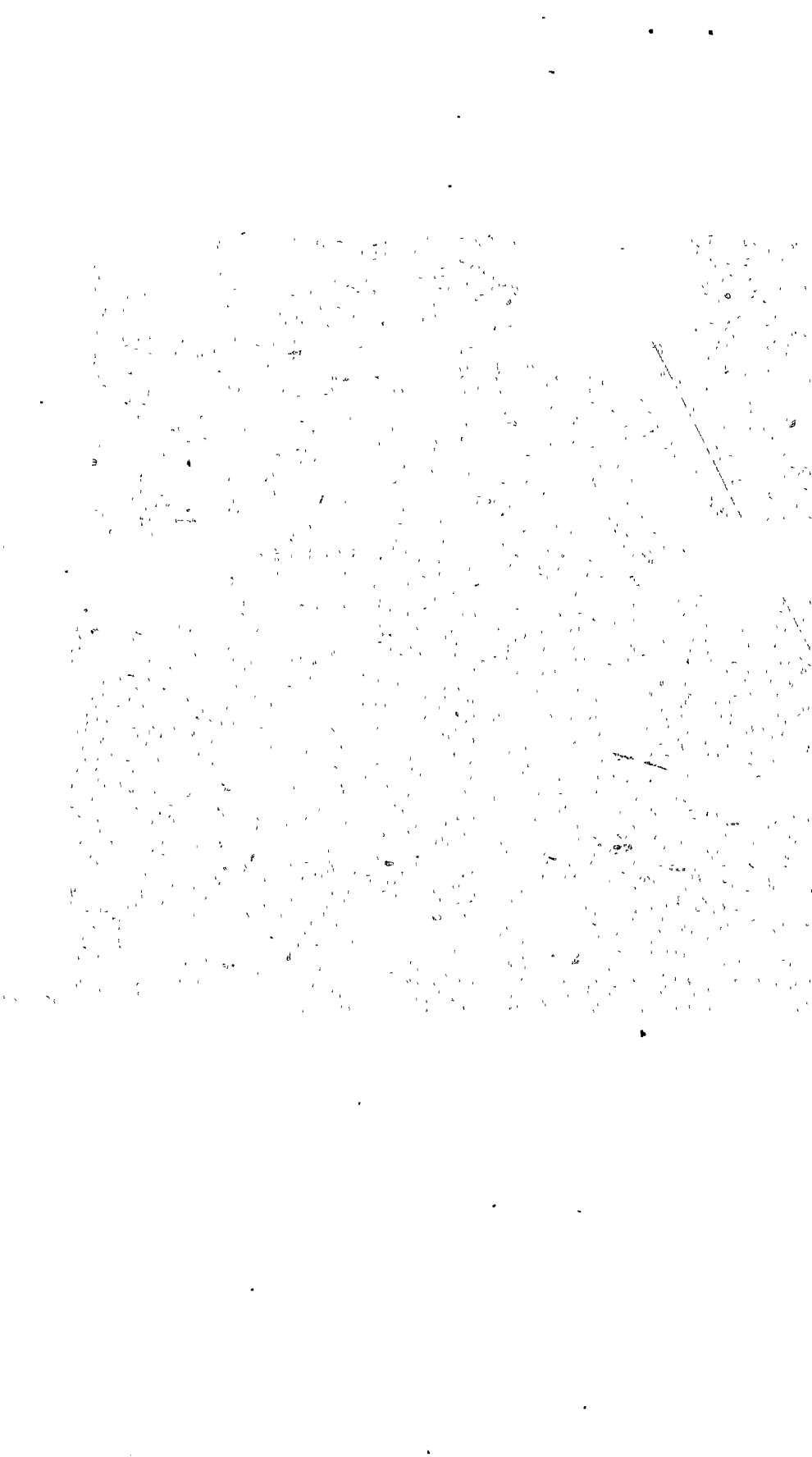
56. Any creditor, after a certificate of bankruptcy granted, accepting any valuable consideration, whereby to receive more in the pound than other creditors, shall as well as the party giving the same, be guilty of a misdemeanor, and be punishable as in the last section.

57. Any person who shall wilfully conceal any estate or goods of a bankrupt, and shall not within thirty days next after knowledge of the fiat of bankruptcy, discover the same to the assignees, shall forfeit double the value of the estate or goods so concealed, to be recovered by the assignees, or any person suing therefor, the proceeds to be appropriated for the benefit of creditors; and any person after thirty days from the publication of the fiat, voluntarily discovering to the assignees estate or goods of the bankrupt, unknown to them, and not concealed by such person, or in his possession, and which shall thereby be made available for creditors, shall be entitled to a commission of not more than five per cent. thereon, to be allowed by the judge, and paid by the assignees.

58. Copies of papers and documents filed, and of proceedings of record in any bankrupt's estate, certified as such, under the seal of the court, shall be received in all courts and places in the same way, and to the like effect as the originals themselves could have been, had they been produced.

59. If a bankrupt die after fiat nisi published, the court may proceed and settle the estate, as if he were living, and any pro-





bate of a will or letters of administration to be granted, shall be void, as against either official or trade assignees, and for every other purpose, except as to any surplus after payment of all debts proved and expenses incurred in the settlement of the bankrupt's estate.

60. Upon a day, not more than nine nor less than six months from the date of the fiat absolute, a court shall be held, at which creditors and all persons interested shall be cited to appear by public notice, for thirty days next previously given and published as hereafter provided, when accounts shall be passed. As soon after as conveniently can be, a dividend shall be declared. Further dividends, not exceeding three in the whole, may from time to time be declared, of which, public notice shall immediately after be given.

61. If the estate cannot be settled finally, upon the date of the notice first given, further days, not to exceed three months, by any intermediate adjournments, may be named for passing accounts and making a final dividend. In case there should be more than sufficient assets to pay all expences and accounts rendered, the balance shall be paid to the bankrupt or his representatives, under an order of the court.

62. When all accounts have been adjusted, a balance struck, and a final dividend declared, a court shall be held upon a short day fixed by previous adjournment, or upon a month's public notice, duly given; and if it appear to the satisfaction of the judge, that the bankrupt has made full and fair disclosures, and demeaned himself honestly and uprightly, as well in his trade and business before his bankruptcy, as in his conduct and examinations since, and has made no fraudulent or preferential assignments, but has in all things conformed to the provisions of this act, the judge, upon his taking the oath (K,) shall make an order to that effect, and shall grant him a first class certificate under the seal of the said court, (L, No. 1,) and the same shall operate to discharge him from all debts, contracts, and liabilities, as therein set forth, except as therein excepted. But such certificate shall in no case release or discharge any person being a partner of such bankrupt at the time of his bankruptcy, or jointly bound with him in any contract.

63. If, for reasons duly appearing, and which it shall be the duty of the judge to set forth specially in his order, he shall adjudge that the bankrupt is not entitled to a certificate No. 1, then he may grant a second class certificate, (L, No. 2); and in cases of gross fraud and improper conduct, he may withhold a

certificate altogether, setting forth his reasons in the order for that purpose.

64. If any suit or proceedings shall be instituted against a certificated bankrupt for a debt or liability contracted previously to the date of his certificate, and contrary to the provisions thereof, such suit shall be set aside, with costs, on a summary application to the supreme court, or any judge at chambers.

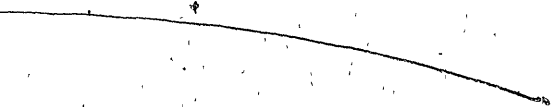
65. Before making an order for any dividend, a certain sum, sufficient in the opinion of the court for that purpose, shall be deducted from the amount of available assets, for the purpose of covering all probable expenses connected with the settlement of an estate, and a further sum of not less than five, nor more than ten per cent. of the remaining available assets, shall be reserved, subject to the order of the court, applicable in whole or in part to the immediate necessities of the bankrupt or his family, to be appropriated from time to time by order of the court, if required, provided he shall demean himself honestly and fairly.

66. If the bankrupt shall be considered worthy, and shall have obtained a first class No. 1 certificate, he shall be entitled to any balance of such per centage reserve fund remaining unexpended at the date of his certificate, but in no case to exceed £250.

67. No action shall be brought for any dividend declared, but execution may issue against the assignees, or either of them, from the court of bankruptcy, upon order obtained, in like manner as upon orders or judgments of the supreme court; and executions recorded in the office of registry of deeds, shall constitute a lien upon the assignees real estate, in the same way as judgments of the supreme court recorded.

68. In actions brought by persons charged with bankruptcy, against petitioners, or others, for any thing done under this act, the plaintiff shall not recover, unless upon proof of malice and want of probable cause, and any person acting under a process of the court shall be entitled to the same protection, and have the same privileges and notices as if acting under a warrant of a justice.

69. Whenever a public notice is, by this act required to be given, or an order or document to be published, the same shall be published in the royal gazette, and in one or more of the newspapers printed in the county where the proceedings are had, if any there be, once or oftener as the court may order, and in handbills posted in at least three public places in such county, one of which shall be the county court house, and production of a copy of the royal gazette shall be evidence of the fact of such notice having been so given.





70. Where anything is required by this act to be done, and a time is limited for the purpose, if there shall be an appeal staying proceedings, then the same time shall be allowed for its performance, after the stay of proceedings shall have ceased, as there was when such proceedings were stayed.

71. An appeal shall be allowed under this act, from any order, sentence, decree, or denial of the judge to a judge of the supreme court at chambers, excepting only from a fiat nisi, or an order for a warrant, (E) from which there shall be no appeal. If a judge of the supreme court shall confirm the judgment appealed from, his decision shall be final.

72. Any party appealing from the court of probate, shall set forth briefly in writing, in his appeal, the grounds of such appeal, and file the same with the registrar, within two days next after the decision complained of, which shall be the entry of his appeal; and he shall at the same time file a bond made to the judge by his name of office, with two sureties, in the penal sum of £60, conditioned to prosecute his appeal and abide the order of a judge of the supreme court, or the said supreme court, which shall immediately operate as a stay of all proceedings, until such appeal shall be determined.

73. The judge of bankruptcy shall furnish to each party, copies of the appeal, and copies of all papers and documents required, with a statement of his decision certified as such, upon payment of the necessary fees, and in case of neglect, the supreme court or a judge thereof, may, by attachment, compel the delivery of such copies.

74. The appellant shall procure a judge's summons directed to the opposing party, to be served upon him or his attorney, or left at his last place of abode, not less than eight days before the return thereof, requiring him to shew cause at chambers upon some day not more than thirty days distant from the date of the entry of such appeal, why the decision complained of should not be reversed or modified, and in default of such summons so served, the appeal may be superseded by the judge of bankruptcy, and the bond shall be forfeited. But no suit shall be instituted on the bond without express leave of the judge of bankruptcy, and then only by way of summary proceedings, unless more than twenty pounds shall be claimed, and the defendant may at any time tender amends or pay money into court. If less than £20 shall be recovered the plaintiff shall only recover summary costs. If the date of the summons be in term, or not not more than eight

days before the first day of term, then to secure an early decision, it may be made returnable to term, or the last day of sittings.

75. If a judge at chambers shall order the judgment appealed from to be reversed or modified, he shall in such order set forth in what particulars, and the same shall be returned and carried into effect by the court of bankruptcy, unless a party, his attorney or agent shall, within three days next, make and file an affidavit, setting forth that he is dissatisfied with such last mentioned decision, stating in what particulars. In such case the appeal and proceedings shall be returned to the supreme court at Halifax, and if in term time, and notice to the opposing party, his attorney or agent, have been given, the matter may forthwith be set down for argument by either party, as if a four day rule nisi had actually issued therein returnable to the then present term, and been duly served; or if in vacation, then for the next ensuing term; but no want of entry shall operate to delay argument or judgment. The court, if justice require it, may enlarge the time for argument or decision, till the ensuing term.

76. The court of appeal may tax and make such order as to payment of the costs of appeal, whether out of the bankrupt's estate or otherwise, as shall appear right, and the court of bankruptcy may enforce the same by execution.

77. Judges of bankruptcy, in addition to the special authority hereby conferred, shall possess the same jurisdiction over the estates and persons of bankrupts and the claims of creditors and assignees, for all purposes of this act, as judges of probate do over the estates of deceased persons, and creditors accounts after administration granted, and they shall have the same control over assignees and their acts, and for discharging them from their bonds and liabilities as judges of probate now have over administrators, their acts and bonds.

78. The words "real estate" shall, for the purposes of this act, be held to include real estate, lands, tenements, and hereditaments, and all rights, and beneficial interests in, to, or arising out of the same. And the word "goods" shall include personal property, money, securities for money, and all rights, and beneficial interests, in, to, or arising out of the same, and all property not included in the words "real estate."

79. The judge may, from time to time, order monies in the hands of assignees, to be paid into any chartered bank, to the credit of the estate, and the same shall be paid out again, only upon an order of the court.





80. The court may adjourn its proceedings and hearings as occasion shall require.

81. Orders and proceedings in bankruptcy, and certificates granted by courts of competent jurisdiction in any part of the United Kingdom of Great Britain and Ireland, whereby real estate and goods within this province are affected or liable to be taken or sequestered, may be pleaded with the like effect, and shall be held to afford the same protection to bankrupts named therein, their real estate and goods within this province, that they do to bankrupts, their real estate and goods, in Great Britain and Ireland.

82. Search-warrants may be granted upon the usual information by any judge of bankruptcy, at the instance of assignees, to peace officers, to search for property suspected of being concealed, and the same, and all other warrants named in this act, may be endorsed in the same way as justices' warrants.

83. When stocks of any kind are standing in the name of a bankrupt, the court may order the same to be transferred to the credit, and in the name of his assignees, upon the production of a certified copy of the order of their confirmation as such, and the persons whose act or consent is necessary for that purpose, are hereby indemnified for all things done pursuant to such first named order.

84. If the assignee of a bankrupt shall himself become bankrupt, it shall be sufficient grounds for his removal.

85. The fees to be allowed official assignees, under this act, shall be the same as those allowed to sheriffs in cases of levy but no sale.

86. The fees to be allowed to appraisers, proctors, and advocates, under this act, shall be the same as those now allowed by law in the probate court, for like services, and no more.

87. The fees of the judge and registrar, shall be the same as those for like services in the probate court. The judge and the registrar shall be entitled to 10s. each, for a fiat nisi; and 10s. each, for a fiat absolute or a supersedeas; and £2 6s. 8 each, for a certificate of bankruptcy issued: for other services they shall be entitled to charge the same fees as judges or registrars of probate for like services in their courts.

88. Trade assignees, over and above all such actual and necessary expences as may appear just and reasonable, shall be entitled, out of the estate of the bankrupt, to the same amount of remuneration as executors or administrators are entitled to by law, out

of the estate of deceased persons, to be apportioned among them upon the same principles.

89. Sheriffs and other ministerial officers and witnesses, shall be entitled to the same fees as for like services under chapter 130 of the revised statutes.

90. The forms to be used in carrying this act into operation where not furnished in the schedule, shall conform as nearly as may be to the forms prescribed in chapter 130 of the revised statutes.

SCHEDULE OF FORMS.

A.

County of
To-wit: }
In bankruptcy. }

PETITION OF CREDITOR.

In the court of bankruptcy.

To the worshipful judge of bankruptcy for the county of
The petition of C D, of in the county of [if more
than one petitioner of E F, of and G H, of]

Respectfully sheweth :

[If more than one.] And the said C D, for himself saith, that A B, of
[or late of] [describing his occupation, &c.] is justly and truly in-
debted to him in the sum of £ after deducting all credits to which he
is by law entitled. [and the said E F, for himself, &c., and the said G H.,
for himself, &c.:] and your petitioner further shew that the said A B, [here
set forth the act or acts of bankruptcy complained of, briefly, with the
dates as near as may be] and that the debts and liabilities of the said A B,
at the present time exceed the sum of £200, and it is therefore requested
that a fiat nisi of bankruptcy may issue against him, and that such other and
further proceedings be thereupon had as by law provided. And your peti-
tioner, as in duty bound, will ever pray. Dated at this day
of A. D. 18

C. D.
[E. F.
G. H.]

The said C D, [E F, & G H, severally] make oath that the statements
[by them respectively] made in the foregoing petition are, to the best of
knowledge and belief, true in substance and matter of fact.

C. D.
[E. F.
G. H.]

Sworn to by C D, [E F, G H.] this
day of A. D. 18
Before me, Y Z, judge of bankruptcy.





If the petition be by partners, alter the form accordingly, and let it be signed by one, on behalf of himself and partners.

If the petition be against partners, alter the form accordingly.

If the petition be by an agent, let that fact be set forth in the affidavit.

B.

County of

To-wit: }
In bankruptcy. } FIAT NISI OF BANKRUPTCY.

In the court of bankruptcy.

In the matter of the estate of A B. of

Upon reading the petition of C D. of [as the case may be.] dated the day of A. D. 18 , praying a fiat nisi of bankruptcy against A B. of [trader.] It is ordered that a fiat nisi of bankruptcy do issue accordingly. and I do hereby declare the said A B to have become a bankrupt, on and after the day of A. D. 18 , [the date of the act of bankruptcy complained of. Set forth also briefly the act proved.] unless cause to the contrary be shown, at at o'clock in the noon of the day of A. D. 18 , [not more than fifteen nor less than six days from the date thereof,] when and where the said A B, and all parties interested as creditors, are required to attend.

Given under my hand at this day
of A. D. 18.

Y Z, judge of bankruptcy.

The exact date of the act complained of need not necessarily be proven.

C.

County of

To-wit: }
In bankruptcy. } PETITION OF BANKRUPT.

In the court of bankruptcy.

To the worshipful judge of bankruptcy for the county of
The petition of A B, of in the county of [trader.]

Respectfully sheweth :

That your petitioner, by mi-fortune, and without fraud, covin, or collusion, has become bankrupt, and is, as he verily believes, unable to pay his debts. Your petitioner annexes hereto a schedule of his estate and debts, as required by law, and is prepared to make a full and fair discovery of all his liabilities, and when and how the same were contracted, and also of his real estate and goods, and to produce his books of accounts, with all securities held, and furnish every kind of information relative to his estate within his power or control, and to receive and abide by the order of this court, in all things to be made, and desires that a fiat nisi of bankruptcy may issue against him ;

and that such other and further proceeding may thereupon be had as by law provided, and he, as in duty bound, will ever pray.

Dated at this day of 18 . A. B.

Schedule referred to in the foregoing petition.

- Real estate—
- Personal property---
- Liabilities—
- Securities.

Dated at this day of A. D. 13 . A. B.

The said A B maketh oath, and saith, that the statements contained in the foregoing petition, and the schédule annexed, are true in substance and matter of fact.

Sworn to at this day of A. D. 18 , before me Y. Z, judge of bankruptcy.

[If the petition be by partners, alter the form accordingly, and state the names of the several petitioners in the attestation or attestations, respectively.]

D.

SUPERSEDEAS OF FIAT NISI.

County of
To-wit: }
In bankruptcy. }

In the court of bankruptcy.

In the matter of the estate of A B, of
Whereas it hath been made to appear to me that the fiat nisi of bankruptcy, dated the day of A. D. 18 , in this matter, prayed for by the petition of hath improvidently issued. It is therefore hereby ordered, that the said fiat nisi, and all proceedings in this matter had, be superseded, with costs, to be paid by , and that the said A B, have execution therefor.

Dated at this day of A. D. 18 , Y. Z, judge of bankruptcy.

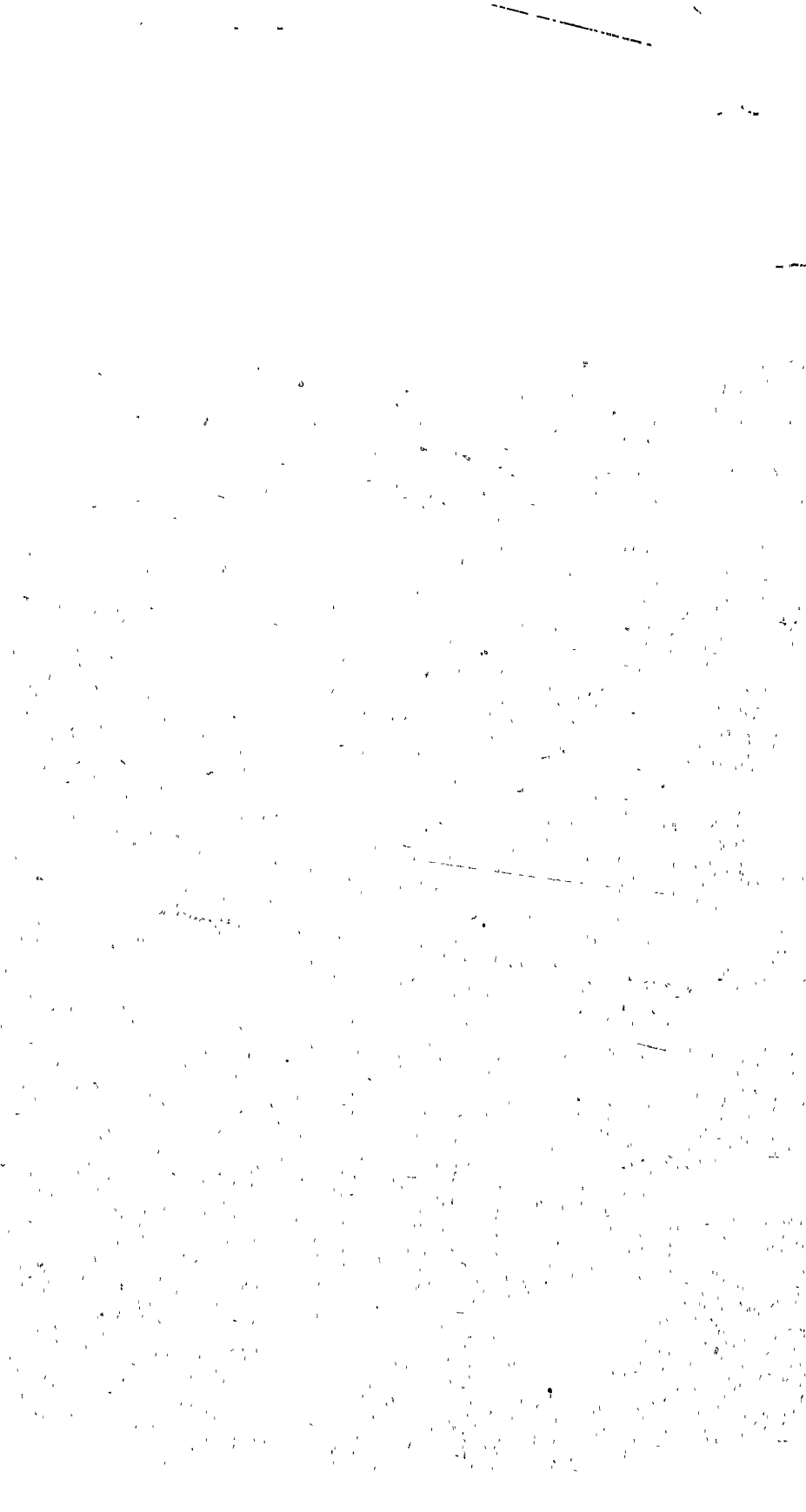
E.

WARRANT TO OFFICIAL ASSIGNEE.

County of
To-wit: }
In bankruptcy. }

In the court of bankruptcy.

In the matter of the estate of A B, of
To the official assignee of the county of greeting :





Whereas a fiat nisi of bankruptcy hath issued against A B,
of in the county of returnable the day of

You are hereby commanded forthwith to take possession of all and singular the real estate and goods of the said A B. wheresoever situate in this province, make an inventory and appraisement of, and hold the same in trust, for the benefit of his creditors, subject to the order of this court. Whereof fail not, and make due return of this writ, with your proceedings thereon, to this court, within thirty days next.

Given under my hand and the seal of this court, at
(L. S.) the day of A. D. 18 .

Y. Z., judge of bankruptcy.

[*Alias warrants may issue when necessary.*]

F.

County of

To-wit: { FIAT OF BANKRUPTCY.
In bankruptcy. }

In the court of bankruptcy.

In the matter of the estate of A B, of

Upon reading the fiat nisi of bankruptcy, made on the day of
A. D. 18 , in the matter of the estate of A B. of And upon hearing
had on the return day thereof, I do hereby declare the said A B to have
become and to be a bankrupt, on and after the day of A. D.
18 , and the said fiat nisi is hereby made absolute.

Given under my hand at the day of A. E. 18 ,
Y. Z., judge of bankruptcy.

G.

NOTICE OF MEETING TO CHOOSE TRADE ASSIGNEES.

County of

To-wit: {
In bankruptcy. }

In the court of bankruptcy.

In the matter of the estate of A B, of bankrupt.

Notice is hereby given, that on the day of a meeting
will be held at the office of the official assignee of the county aforesaid, (*or some
convenient place near thereto,*) when and where the creditors of said A B
are required to attend, to choose trade assignees.

Given under my hand at this day of A. D. 18 .
Y. Y., judge of bankruptcy.

II

CREDITOR'S TICKET

County of _____
 To-wit: _____)
 In bankruptcy: _____)
 (— v.c.es.)

In the court of bankruptcy.

In the matter of the estate of A. B. of _____ bankrupt.
 I J, a creditor of the said A. B., is entitled to _____ votes for trade assignees.
 Dated at _____ this _____ day of _____ A. D. 18 _____.

U. V, chairman.

[Tickets to be numbered 1, 2, &c., according to the number of votes, to which the party may be entitled, and counted accordingly.]

I

OATH OF VOTER'S QUALIFICATION

I _____ of _____ in the county of _____ do solemnly swear that I am [or if a partner, the firm of _____ of which I am a partner, or in case of a creditor absent from the county, that _____ a creditor absent from the county, and whose duly authorized agent for this purpose I am is] a creditor of the estate of the said A. B. after deducting all credits, to the extent of £ _____ to the best of my knowledge and belief. So help me God.

Sworn to by I. J, before me, }
 this _____ day of _____ A. D. 18 _____ } I. J.
 U. V, chairman. }

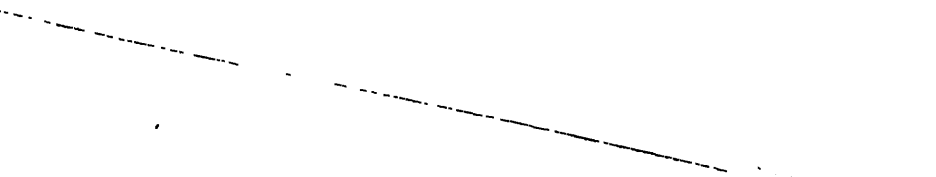
J.

County of _____
 To-wit: _____)
 In bankruptcy: _____)

In the matter of the estate of A. B., of _____ a bankrupt.
 Whereas A. B., of _____ trader, by a fiat of bankruptcy, dated the _____ day of _____ A. D. 18 _____, hath been duly declared to be a bankrupt. I do therefore by these presents grant unto him this writ of liberation and protection, hereby discharging him from all arrest or imprisonment from debt, and protecting him from any such arrest or imprisonment, at, and from, and after the date hereof, until the said fiat shall be superseded or until final order made in the matter—of which all sheriffs, constables, and other officers, are required to take notice and govern themselves accordingly. Given under our hand and the seal of this court, at _____ this _____ day of _____ A. D. 18 _____.

(L. S.)

Y. Z, judge of bankruptcy.



.....

K.

County of

To-wit : / BANKRUPT'S OATH.
In bankruptcy. *In the court of bankruptcy.*

A B, of in the county aforesaid, bankrupt, maketh oath, and saith that he hath honestly and fairly demeaned himself in his business and dealings, both before and since his bankruptcy: that he hath fully and fairly discovered all his real estate and goods of which he was possessed, or to which he was entitled, at the date of his bankruptcy or at any time since, and hath used his best efforts to make the same available for the benefit of his creditors, without preference or partiality; and that he hath in all things, to the best of his ability, complied with the requisitions of an act, entitled, an act relating to bankruptcy.

Sworn to at this day of } A. B.
A. D. 18 , before me }

Y. Z, judge of bankruptcy.

L. No. 1.

Province of Nova-Scotia, }
County of To-wit: }
In bankruptcy.

No. 1 CERTIFICATE.

In the court of bankruptcy.

In the matter of the estate of A B, of bankrupt.

This is to certify that A B, of having been duly declared bankrupt, and having complied in all respects with the requisitions of the statute, in such case provided, I do hereby grant him this first class certificate No. 1, with all the privileges, benefits, and advantages thereto by law appertaining, hereby acquitting and discharging, and forever releasing his person, real estate, and goods, from all debts, dues, and demands contracted heretofore, or for which he may be in anywise liable upon the date hereof: excepting only such debts and liabilities, if any there be, as he may have incurred by defaultation as a public officer, executor, administrator, guardian, receiver, trustee, or assignee of a bankrupt or insolvent debtor.

L. No. 2 CERTIFICATE.

As in No. 1, except second class, for first class, and No. 2 for No. 1, to the asterisk; where the following words are to be inserted: "in one [two or three] years from the date hereof, his." [as the judge shall determine,] but not to exceed three years. Fractions of a year may be inserted.

Given under my hand and the seal of the court of
bankruptcy, for the said county, at this
day of A. D. 18 .

(L. S.)

Y. Z, judge of bankruptcy.